

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-160484
	:	TRIAL NO. B-1101855-B
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
ROBERT LEE CONWELL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Robert Lee Conwell appeals from the trial court's judgment restoring and continuing his term of community control following a community-control violation. Conwell pled guilty to one count of receiving stolen property, and the court sentenced him to a three-year term of community control in August 2011. After Conwell violated the terms of his community control in May 2014 and 2015, the trial court extended the term of community control to five years with an expiration date of April 13, 2017. Conwell was found guilty of a third community-control violation in May 2016. Conwell now complains that the extension of community control violated the statutory prohibition on terms of community control longer than five years.

In his sole assignment of error, Conwell asserts that the trial court erred when it sentenced him to a term of community control that exceeds five years in duration. R.C. 2929.15(A)(1) provides that a court may impose a community-control sanction on an offender, but the term of community control shall not exceed five years. The court initially sentenced Conwell to a three-year term of community control in August 2011.

That term would have expired in August 2014. However, in April 2014, probation reported that Conwell had violated the terms of his community control and his whereabouts were unknown. The trial court issued an arrest warrant for Conwell at that time, but Conwell did not appear before the court until January 2015. The court restored Conwell to community control and extended the period of community control to five years, with an expiration date of April 13, 2017. After his third community-control violation in 2016, the court again restored Conwell to community control with the same expiration date.

Conwell argues that his term of community control exceeds the five-year limitation by 240 days. However, the period of community control is tolled until the offender is brought before the court if the offender absconds. R.C. 2929.15(A)(1) and 2951.07. “Absconds” can include an offender who willfully fails to report to his probation officer. *In re Townsend*, 51 Ohio St.3d 136, 137, 554 N.E.2d 1336 (1990). The record demonstrates that Conwell’s whereabouts were unknown as of April 2014, and he was not brought before the court until January 2015, nine months later. As a result, Conwell’s term of community control was tolled for those nine months, and the court was free to exercise its statutory authority under R.C. 2929.15(A)(1) through May 2017. Because his term of community control ends in April 2017, the trial court’s judgment is not contrary to law.

Accordingly, we overrule Conwell’s sole assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the court's journal on March 24, 2017

per order of the court _____.

Presiding Judge